

# Restorative justice is viable prison alternative

*One of the charges of the Missouri Sentencing Advisory Commission is to explore real alternatives to imprisonment and report those findings to the Governor and General Assembly. Following is a research piece on restorative and reparative justice researched and written for the Commission's 2005 report.*

The challenges of this era have caused many criminal justice practitioners to re-evaluate some of the basic tenets and practices of the system responsible for providing justice in our country. Historically our system is based on an assumption that “the state” assumes responsibility for all those impacted in the justice system. This approach has been widely challenged in recent years with victims and other parties expressing a desire to be heard and represented in this process. Our current system is primarily offender-oriented with the state's interest driving the process.

Prison overcrowding, extensive correctional resources dedicated to relatively minor and non-violent offenders and the desire for additional involvement in the process by those previously not represented have caused many jurisdictions to look for alternatives. Budget constraints and a desire to make better use of available resources have resulted in an increased interest in innovative ways to address criminal justice issues and involve individuals and groups not previously represented in the criminal justice process.

Missouri's interest in this area has been expressed in several ways. Section 217.777.1 RSMo., charges the Missouri Department of Corrections to administer a community corrections program to encourage the establishment of local sentencing initiatives. Among the goals in this section are:

- Promote the accountability of offenders to crime victims, local communities and the state
- Increase the use of restitution
- Reduce the costs of treatment, punishment and supervision of offenders
- Improve public confidence in the criminal justice system by involving the public in the development of community-based sentencing options for eligible offenders

In Section 217.440 RSMo., the Director of the Department of Corrections is authorized to establish a program of restorative justice within the department's correctional centers. The department has been involved in restorative justice efforts primarily by providing an opportunity for community service work while incarcerated as well as victim-oriented programs that provide victims of crime an opportunity to educate offenders on the effects of crime on a victim and the community. These programs, while worthwhile, do little to provide alternative sentencing options or to provide for active participation of a victim and community in a particular crime that affects them.

In addition to the statutory direction, the leadership of the state has expressed increased interest in alternatives to the traditional model by directing department heads and

commissions to explore this area. Senate Bill 5, which was enacted June 27, 2003 (Section 558.019.6 RSMo.) directed the Sentencing Advisory Commission to consider the feasibility of incorporating alternative sentences, work release, home-based incarceration and probation and parole options into their work.

There is little doubt that restorative and reparative justice approaches will not replace prisons. Prisons will continue to be the primary method of sentencing for violent and dangerous offenders. It will also be the primary method for dealing with those offenders who do not lend themselves to these types of sanctions. This approach may, however, be a viable option for lower level adult offenders as well as juvenile offenders.

The concept of restorative and reparative justice is based on the premise that a crime represents a debt owed not only to the state, but to the victim, the victim's family and to the community as a whole. In addition, the offender is to acknowledge responsibility for the harm that has been done. It is the responsibility of the community to provide a forum in which justice can occur.

The resources of restorative or reparative justice depend largely on the assets available in the community as well as the willingness of various individuals and groups to participate in the process. While adherence to the principles is the most important aspect, communities and jurisdictions can develop an approach that is most likely to be successful in their area.

While there are great variations in approaches, some of the more common models will be briefly summarized in this document. The models may reflect the individual priorities of the community as well as the particular needs of the jurisdiction. It is important to note that the term "community" does not necessarily reflect a jurisdictional boundary but is more intended to reflect the social norms and connections that may exist regardless of the geographic boundaries.

### **Victim/Offender Mediation**

This approach creates an environment where the victim has an opportunity to meet with the offender in a safe and structured setting for the purpose of a facilitated discussion of the crime. In this setting the victim is able to tell the offender about the effects of the crime from a physical, emotional and financial perspective. This setting can create an environment for questions to be answered as well as a forum to discuss the restitution plan for the offender.

Cases may be referred by judges, probation officers, prosecutors, defense attorneys and law enforcement officers. This approach has been used as a diversion from prosecution but also may be used after a formal admission of guilt with mediation as a condition of probation or other disposition.

It is important that the victim's and the offender's participation is voluntary. Implementation of such an approach must be mindful of sensitivity to the needs of the victim.

The American Bar Association has endorsed victim-offender mediation and recommends its use in the United States.

The following example of such mediation is cited by Gordon Bazemore, Ph.D. Professor, Department of Criminology and Criminal Justice at Florida Atlantic University, Ft. Lauderdale, Florida and Mark Umbreit, Ph.D. Director, Center for Restorative Justice and Peacemaking, University of Minnesota, St. Paul, Minnesota:

"The victim was a middle-aged woman. The offender, a fourteen-year old neighbor of the victim, had broken into the victim's home and stolen a VCR. The mediation session took place in the basement of the victim's church. In the presence of the mediator, the victim and offender talked for two hours. At times, their conversation was heated and emotional. When they finished, the mediator felt that they had heard each other's stories and learned something important about the impact of crime and about each other.

The participants agreed that the offender would pay \$200 in restitution to cover the cost of damages to the victim's home resulting from the break-in and would also reimburse the victim for the cost of the stolen VCR (estimated at \$150). They also worked out a payment schedule.

During the session, the offender made several apologies to the victim and agreed to complete community service hours working in a food bank sponsored by the victim's church. The victim said that she felt less angry and fearful after learning more about the offender and the details of the crime. She also thanked the mediator for allowing the session to be held at her church."

The connection with her church was comforting to this particular, and indeed, faith-based restorative justice programs are becoming especially popular. A church is often a focal point of a community, and its support for a restorative justice program can be enormous.

### **Community Reparative Boards**

Variations of this model have been in use in this country since the 1920s. These boards are usually comprised of a small group of citizens who have been specifically trained for this responsibility. The board conducts public, face-to-face meetings with offenders ordered by the court to participate in the process. The board discusses the nature of the offense and develops a set of proposed sanctions. These sanctions are discussed with the offender until an agreement is reached. The board also monitors compliance and submits reports to the court.

This model has been used primarily with adult offenders convicted of non-violent and minor offenses. In recent years it has also been used with juvenile offenders.

### **Family Group Counseling**

This model has been used primarily as a diversion option for juveniles but has also more recently been used for minor, non-violent adult offenders. This model uses police officers and school officials to set up and facilitate family conference meetings. Those participating are those most affected by the crime – victims, the offender, family, friends and key supporters. A trained facilitator leads a discussion centered on how the offense affected each of them and others. The result is a plan to determine how the harm can be repaired.

Each participant is given the opportunity to talk about how the crime has affected them. Each participant contributes to the problem-solving process and the development of a contract that addresses the repair that is to be done.

### **Circle Sentencing**

This model is the most extensive in terms of the participants and scope of effort. It has been used extensively in Canada and by American Indians in the United States. It has been used with juvenile and adult offenders in both rural and urban settings. It is designed not only to address the criminal behavior of offenders but also to consider the needs of victims, families and the community.

In this model all circle members – victims, family, friends, police, prosecutors, judges and the offender -- have the opportunity to speak and deliberate to arrive at a consensus for a sentencing plan that addresses the concerns of all involved. The success of this model depends largely on the level of cooperation between the criminal justice system and the community.

Sentencing Circles have been used for serious and violent offenses, but are not appropriate for all crimes. Critical factors for consideration include the offender's character, sincerity and connection to the community. Since this approach can be very labor intensive, it is not recommended for a routine response to first-time offenders and minor offenses.

### **Conclusion**

As previously mentioned, there is a great deal of flexibility in determining the best solution for a community. The key component is a strong relationship between the criminal justice practitioners and the resources of the community. There must be recognition that victim and community have an interest in being a working part of criminal justice and public safety in their area.

Restorative justice programs target the ultimate goals of improving public safety and reducing the likelihood that additional criminal activity will occur. The retribution model

of sentencing in the United States has not always been seen as an effective method of achieving those goals, thus alternatives like restorative/reparative justice are gaining in popularity around the country. And, their effectiveness cannot be denied.